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ABSTRACT

One of a series of secondary level teaching units presenting case studies with pro and con analyses of particular legal problems, the document presents a student's lesson plan, a teacher's lesson plan, and a lawyer's lesson plan for a unit on First Amendment rights of students. Designed to expose students to the 1975 Supreme Court ruling that students who have been deprived of their constitutional rights can sue for damages, the unit raises various legal questions surrounding the issue. Although similar in content, the student and teacher lesson plans are presented separately to facilitate independent or small group work by students. Activities and discussions center around a lawyer's visit to the classroom, analysis of a political cartoon, a case study ("Tinker versus Des Moines Independent School District"), a role simulation, and student readings. The lawyer's lesson plan presents a more thorough discussion of the case study, including thought-provoking questions and discussion concerning the resolution of disputes, hypothetical situations, and other court decisions and issues dealing with student rights. (LH)

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"STUDENTS ARE ALSO CITIZENS".

First Amendment Rights of Students

A Student's Lesson Plan

Prepared by Estelle Howard
Richard Weintraub, 1982

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SP 016 038

STUDENTS ARE ALSO CITIZENS
(First Amendment Rights of Students)

STUDENT'S LESSON PLAN

INTRODUCTORY UNIT #1

In 1975 the Supreme Court rules that students who have been deprived of their constitutional rights could sue school officials for money damages. The cartoon that appears below has something to say about this decision. Study it carefully. Discuss the questions with the class.

[Cartoon]

"POWER TO THE PUPIL!"

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QUESTIONS

A. What point do you think the artist is making in the cartoon? Do you agree with him? Why? Why not?

B. Do you believe the "right to sue" is a constitutional right students should have? Why? Why not?

C. Under what circumstances would you say a student should be able to sue school authorities for damages? Are any of your reasons concerned with First Amendment rights or due process?

D. How do you think teachers feel about the current growth of student rights? The school board?

E. Do you think school officials should be more conscious of students' constitutional rights when drawing up rules and regulations for students? Do you think this right to sue will put pressure on school board members to consider more carefully limitations of student expression? Will this be good or bad for education?

INTRODUCTORY UNIT #2

You will work with a small team to prepare one major right to be included in a Students' Bill of Rights your class will write. For background material read the Preamble to the Constitution, the First Ten Amendments and Section 1 of the 14th Amendment (Due Process Clause) to the United States Constitution.

In open discussion, give your opinion of what should be included in such a document. From the list of suggestions that have been written on the blackboard, assist in deciding what are the most important or priority rights of students.

The class will be divided into small teams (no more than four on a team). Each team will be assigned one of the major rights designated by the class. The team will then draft an article supporting that right.

Work cooperatively with your team.

After the Students' Bill of Rights has been drafted, examine the document carefully. Consider the following questions with regard to the Bill of Rights your class has drafted.

A. In drafting the Bill of Rights did you consider the rights of minorities in the school community, i.e., teachers, principals, school board?

B. If the minority rights were not protected, did you consider what dangers this created for the rights of the majority? The minority?

C. Did you consider the responsibilities the student-citizen had to accept in order to have a democratic society?

D. What provisions did you make to enable the school administration to maintain order? To have effective classroom control?

E. Was one of your considerations the fact that the prime purpose of school is learning?

LAWYER-IN-THE-CLASSROOM UNIT

Read the following case. Consider the facts and issues carefully. Study the questions below and be prepared to discuss them with the visiting lawyer.

CASE

The case used in this fact sheet is based upon the Supreme Court's landmark decision regarding students' First Amendment rights: Tinker v. Des Moines Community School Dist., 393 U.S. 502 (1969). Students will be dealing with the same issues faced by the Supreme Court Justices.

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school. In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group was determined to publicize their objections to the hositilites in Vietnam and their support for a truce by wearing black arm bands during the holiday season and by fasting on December 16 and New Year's Eve. The principals of the Des Moines schools became aware of the plan to wear arm bands. On December 14, 1965, they met and adopted a policy that any student wearing an arm band to school would be asked to remove it, and if he refused, he would be suspended until he returned without the arm band. All the students involved were aware of the regulation that the school authorities adopted. On December 16, Mary Beth and Christopher wore black arm bands to their schools. John Tinker wore his the next day. They were all sent home and suspended from school until they would come back without their arm bands. They did not return to school until after New Year's Day, when the planned period for wearing arm bands had expired. The students' fathers then filed a complaint in the federal district court. They asked for an injunction restraining the school officials and the members of the Board of Directors of the school district from disciplining the students and they sought nominal damages.

QUESTIONS

A. What are the major issues raised by the case? Do you feel that a student has a constitutional right to express his or her views at school? If so, is it absolute? Or may the schools regulate student expression? Can the school authorities ban student expression entirely?

B. If you were a school official, what arguments would you make in favor of limiting student expression in this case? As a student what arguments would you make to support free student expression in this case?

C. What if a group wants to wear arm bands, or buttons, or similar expressive apparel demonstrating the students' support for some organization which espouses racial hatred (i.e., American Nazi Party, Ku Klux Klan, etc.)? Should these students be able to symbolically express their views? If they know that their views are so unpopular that they will generate extreme reactions in others, should they still be able to express these views?

D. How would you decide this case? Why?

FOLLOW-UP UNIT #1

Following the lawyer's discussion with your class, you will engage in a role simulation, "High School". For the simulation to be effective the players must take on the social attitudes, prejudices, misconceptions and goals that people in that group normally seem to have.

Before the class starts the simulation, discuss present rules you believe infringe on your rights as a student and what you think should be done to change such rules. Below are some suggested changes to consider. Enlarge the list through class discussion.

A. A Student Evaluation Committee should be established to rate teachers.

B. The school campus should be open. Students should have no restrictions on their right to come and go freely.

C. Student lockers should be protected against private investigation by either school authorities or police. In the event of a legal search, the student should be present, as well as two unconcerned witnesses.

D. A student representative of the Student Council should be present at all suspension, expulsion and exclusion hearings.

E. A representative student committee should be formed to meet with the Board of Education on matters concerned with integration and busing.

F. A student committee should be formed to develop strategies to fight against crime and violence on the campus.

G. A smoking area should be provided on campus.

"HIGH SCHOOL"

SITUATION

The student body presidents of the three high schools in the town of Lawrenceville called an open meeting of the students to discuss what they believed were undue limitations on their freedoms as individuals and as members of a minority group in the wider community of Lawrenceville, and what they might do about it.

After discussion and argument, the students agreed on what they wanted done to change the present rules, which they claimed infringed on their rights.

TIME TABLE AND PROCEDURAL DESCRIPTION

Time Needed: One or two class periods.

ORGANIZATION

1. The game can be played with a group of twenty to thirty-five.

2. Divide the main group into five odd-numbered sub-groups, each to represent students, teachers, parents, administrators, and school board members.

3. Each sub-group selects a spokesperson who will represent them in the play. Should a sub-group wish to do so, it can change its spokesperson during a time-out.

4. The spokespersons for the five sub-groups meet as an ad hoc committee of the school board to work towards a resolution of the problem. The school board spokesperson acts as chairperson of the meeting.

5. Organize the room so that the committee meets in the center at a table or in a circle with one extra chair called The Influence Chair.

6. The Influence Chair can be taken by anyone from any group who wishes to express his/her views. The Chair must be vacated when another person wishes to speak.

7. This ad hoc committee, established by the Board of Education, operates according to Robert's Rules of Order, Revised. Each member of the committee has one vote. Anyone occupying the Influence Chair may speak, but can neither propose motions nor vote.

8. If disruptions during the game make it necessary for the teacher, who will act as referee, to declare participants arrested, they will not be permitted to use the Influence Chair, to call caucus meetings, or to communicate in writing with their spokesperson on the ad hoc committee.

9. Dissident members of sub-groups can communicate with other dissidents either in writing or through private discussion while the game is in progress. The only limitation on this type of communication is that it must not disrupt the game.

10. Minority or dissenting groups may caucus and form coalitions as the play progresses.

11. The teacher explains the organization and the play. At any time the teacher can introduce new data, indicate the passage of time, or exercise police power. The teacher's decisions are final.

12. Each sub-group must act on its statement of goals, and must also consider the political implications of proposals it makes (e.g., if the school board agrees to all of the students' requests, it could lead to a recall election, etc.).

THE PLAY

1. The teacher explains procedures and organization, etc.

2. The students present suggested school changes.

3. Sub-groups are organized.

4. Sub-groups select spokespersons, discuss goals, strategies, and the responses they will make to students' requests.

5. The meeting of the committee is convened by the teacher.

6. The spokesperson for the administration proposes action on the students' requests.

7. Each sub-group spokesperson responds to the proposal, the student group goes last.

8. Members of the sub-groups can communicate with their spokespersons in writing, or they can take the Influence Chair and be recognized by the chairperson of the committee.

9. As the discussion progresses, the spokespersons can request time to meet with their sub-groups.

10. Dissenters can request that the teacher call "time out" and convene meetings of dissenting groups or meetings of dissenters with other sub-groups (e.g., dissenting teachers can meet with student sub-groups).

GROUP GOALS

Each individual must operate within the framework of the prejudices, social attitudes, myths, misconceptions, etc. of his/her group.

STUDENTS ARE ALSO CITIZENS

PARENTS:

Your educational philosophy and that of the community is shared by most teachers, administrators, and school board members, and is best expressed by the following statements:

"The primary goal of the schools in this community is to prepare young people to take their place as productive members of American society."

"Practical skills are needed for success as well as the ability to follow the will of the majority on most matters pertaining to individual habits and modes of behavior."

"It is also the responsibility of the schools to help students develop a respect for the history and institutions of the United States."

STUDENTS:

You have a strong desire to participate in matters that seem important concerning your school and society. In particular, you want more civil rights and more participation in school affairs. You believe the democratic ideals of American life should be practiced and do not see any difference between yourselves in the school community and adults in the community at large.

TEACHERS:

Your primary interest is educating young people in an orderly school with a minimum of discipline problems and disruptive students. You have a strong commitment to a "democratic society", but a variety of opinions about what constitutes "democratic".

ADMINISTRATORS:

You are primarily concerned with running a smoothly functioning educational institution with a minimum number of problems from students, teachers, or parents.

SCHOOL BOARD MEMBERS:

As a board member, you are primarily concerned with running the best possible educational system for the least money. It is difficult to tell which priority you consider most important. You favor order and smoothly running schools with a minimum amount of parental dissatisfaction. You were elected by a small minority of the registered voters during a time of apathy over educational matters in the community. You want to continue to represent your community and respond to pressure from your constituents.

FOLLOW-UP UNIT #2

Read the article "Press Freedom and Student Publications". Discuss the questions as they are raised in the body of the article. In discussing freedom of the press on the high school campus, see how you can apply the reasoning of the Supreme Court in the Tinker case to this issue.

Press Freedom and Student Publications

In 1973 Mike Weiner, a journalism teacher at Canoga Park High School, sent a letter to the school board to protest the statement, "the principle of freedom of the press does not apply to school newspapers", which was contained in the official course of study for Advanced Journalism.

This initial letter was the beginning of a lengthy dispute, with teachers and students pitted against administrators and the school board. At issue were the questions: Should the student press be protected by the First Amendment? Did the school board policy violate the State Education Code? Were the articles being restricted for fear of controversy, not libel?

QUESTIONS

A. Do you think the protection the general public press has under the First Amendment should be extended to the student press?

B. Would you say that the First Amendment rights of students are being violated if they are not permitted a free press on the campus?

Weiner's position of press freedom was that student press should be operated the way general circulation newspapers were. School press freedom would give exposure to controversial issues, a policy expressly endorsed by the school board in a rule adopted in February, 1973.

Speaking for the schools, the Associate Superintendent contended that student newspapers are essentially a classroom instructional activity, subject to the same restrictions as other educational material, including the principal's approval, and thus not within the First Amendment's protection. The First Amendemnt, the school board spokeperson said, applied

only to unofficial publications and outside speakers. The school spokesperson also disputed the need for exposure to controversy, arguing students have access to the outside and underground press.

QUESTIONS

A. Do you believe First Amendment rights fade away during the hours of employment, whether that employment is an adult's job or a student's class?

B. Do you think that the purpose of classroom activities makes it necessary for the school to put certain limitations on students' rights? Explain your reasoning.

To amass data to support Weiner's charges of censorship, the Los Angeles Journalism Teachers Association sent survey questionnaires to every journalism teacher in the district, collecting anecdotes, quotes and examples. Twenty-five percent of the senior highs and forty percent of the junior highs reported experiencing prior restraint censorship. By a 2-1 margin, the journalism teachers voted to first go through the regular board channels to obtain revision of school policy. If that failed, they would go to the American Civil Liberties Union for aid in court action.

In February, 1974, the LAJTA presented its data before the board committee in a lengthy hearing which aided both sides of the controversy. In a 4-3 vote, the board refused to expand student rights. However, the board did approve a new rule which declared that newspaper articles could discuss controversial issues, but retaining for the principal the "ultimate decision" regarding the school paper's content. This was unacceptable to the teachers. They had tried to go through channels and had lost.

QUESTIONS

A. If you were the attorney for the journalism teachers, what arguments would you make to support the charges of prior restraint being an infringement of First Amendment rights of students?

B. Would you apply the same reasoning the court did in deciding the Tinker case? Why? Why not?

C. Do you think the school board's ruling that approved discussion of controversial issues was broad enough to protect student rights? Why? Why not?

D. How would you argue to support the principal's right to have ultimate decision regarding the school paper's content?

E. What would be your arguments against such control?

F. Do you think that Michael Weiner operated in the public interest by pursuing this issue through so many years of controversy? Why? Why not?

G. From the point of view of the student, what do you think a free press on the campus accomplishes?

H. Are only the rights of school journalists involved in this controversy or are the rights of all students involved? Why?

I. Do you think the school administration gains in the long run when students rights are recognized and respected?

J. If you were the judge in this case, how would you rule on the charges of Michael Weiner and the journalism teachers?

K. What was the class's general opinion on the case?

"STUDENTS ARE ALSO CITIZENS"

First Amendment Rights of Students

A Teacher's Lesson Plan

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TEACHER'S LESSON PLAN

INTRODUCTORY UNIT #1

Instructions For The Teacher

Select the lesson to be used for class preparation for the lawyer's visit. You have the option of using the cartoon, "Power To The Pupil" and discussion questions or to engage in a cooperative effort to write a Students' Bill of Rights. Copy the materials from the Student's Introductory Unit selected and distribute to the class.

Ask the students to study the cartoon, "Power To The Pupil". Discuss the meaning of the cartoon, using the following questions as a springboard to an open-ended discussion of students' rights.

QUESTIONS

A. What point do you think the artist is making in the cartoon? Do you agree with him? Why? Why not?

B. Do you believe the "right to sue" is a constitutional right students should have? Why? Why not?

C. Under what circumstances would you say a student should be able to sue school authorities for damages? Are any of your reasons concerned with First Amendment rights or due process?

D. How do you think teachers feel about the current growth of students' rights? The school board?

E. Do you think school officials should be more conscious of students' constitutional rights when drawing up rules and regulations for students? Do you think this right to sue will put pressure on school board members to consider more carefully limitations of student expression? Will this be good or bad for education?

Cartoon by Renault. *Sacramento Bee*. Used by permission.

"POWER TO THE PUPIL!"

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INTRODUCTORY UNIT #2

As an alternative to the discussion of the cartoon, the teacher may elect to have the class participate in a cooperative effort to develop a Bill of Rights for Students.

Introduce the class to the thought that a Bill of Rights for Students might be an advantageous document for both students and administrators. Point out the fact that when there is a base of rules and privileges for citizens to work from, controversy, infringement of rules, and protection of rights can be handled with greater fairness to everybody concerned as there is a framework on which to build decisions. Such a Bill of Rights might prevent arbitrary establishment of regulations by those in authority.

For background information have the class read the Preamble to the Constitution, the First Ten Amendments and Section 1 of the 14th Amendment (the Due Process Clause) to the United States Constitution.

PROCEDURE

As a classroom project, have the students develop a Students' Bill of Rights.

1. In open discussion, gather the opinions of the students as to what rights should be included in such a document.
2. List the rights on the blackboard.
3. When the list is completed, decide which are the most important or priority rights of students.
4. Divide the class into small teams (no more than 4 on a team).
5. Assign each team one of the major rights designated and have that team draft an Article supporting that right.

CLASS DISCUSSION

After the Students' Bill of Rights has been drafted, have the class examine the document carefully and consider the following questions:

1. In drafting the Bill of Rights did you consider the rights of minorities in the school community, i.e., teachers, principals, school board?

2. If the minority rights were not protected, did you consider what dangers this created for the rights of the majority? The minority?

3. Did you consider the responsibilities the student-citizen had to accept in order to have a democratic society?

4. What provisions did you make to enable the school administration to maintain order? To have effective classroom control?

5. Was one of your considerations the fact that the prime purpose of school is learning?

LAWYER-IN-THE-CLASSROOM UNIT

Prior to the attorney's visit, copy and distribute the Lawyer-in-the-Classroom Unit materials of the Student's Lesson Plan to the class. Have the students study the case that will be analyzed by the lawyer. Ask the students to study the following questions in preparation for discussion of the issues raised in the case.

CASE

The case used in this fact sheet is based upon the Supreme Court's landmark decision regarding students' First Amendment rights: Tinker v. Des Moines Community School Dist., 393 U.S. 502 (1969). Students will be dealing with the same issues faced by the Supreme Court Justices.

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school. In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group was determined to publicize their objections to the hositilites in Vietnam and their support for a truce by wearing black arm bands during the holiday season and by fasting on December 16 and New Year's Eve. The principals of the Des Moines schools became aware of the plan to wear arm bands. On December 14, 1965, they met and adopted a policy that any student wearing an arm band to school would be asked to remove it, and if he refused, he would be suspended until he returned without the arm band. All the students involved were aware of the regulation that the school authorities adopted. On December 16, Mary Beth and Christopher wore black arm bands to their schools. John Tinker wore his the next day. They were all sent home and suspended from school until they would come back without their arm bands. They did not return to school until after New Year's Day, when the planned period for wearing arm bands had expired. The students' fathers then filed a complaint in the federal district court. They asked for an injunction restraining the school officials and the members of the Board of Directors of the school district from disciplining the students and they sought nominal damages.

QUESTIONS

A. What are the major issues raised by the case? Do you feel that a student has a constitutional right to express his or her views at school? If so, is it absolute? Or may the schools regulate student

expression? Can the school authorities ban student expression entirely?

B. If you were a school official, what arguments would you make in favor of limiting student expression in this case? As a student what arguments would you make to support free student expression in this case?

C. What if a group wants to wear arm bands, or buttons, or similar expressive apparel demonstrating the students' support for some organization which espouses racial hatred (i.e., American Nazi Party, Ku Klux Klan, etc.)? Should these students be able to symbolically express their views? If they know that their views are so unpopular that they will generate extreme reactions in others, should they still be able to express these views?

D. How would you decide this case? Why?

FOLLOW-UP UNIT #1

To evaluate the effectiveness of the lawyer's visit and to further understanding of the issues involved in assuring constitutional safeguards for students, the role simulation, "High School", can be used as the follow-up exercise to the lawyer's visit.

The alternative activity for the following lesson is, "Press Freedom and Student Publications". Select the plan which is most appropriate for your class and the time allotted for this lesson.

"HIGH SCHOOL"

A Role-Play Simulation

INTRODUCTION

Freedom of expression and due process of law for students are constitutional safeguards that, until relatively recent time, have been ignored by educators and school boards. The tradition of local control of education and the need by school authorities to maintain order were considered sufficient grounds by the courts to leave decisions over these issues to school governing boards. Within the past 15 years, a number of decisions involving rights to self-expression and due process of law assuring limited constitutional protections to both students and teachers have come down from the Supreme Court.

This role-playing simulation has been developed for use with high school students and groups concerned over the growth of student dissent and activism on high school campuses. It is undoubtedly true that activism at the high school level will increase as student concerns find expression in efforts to bring about change within the framework of the school. It is important for students, teachers, administrators, school board members, and parents to be given an opportunity to discuss student participation before they are confronted with crises in their schools. It is also important for students to consider their demands for greater self-expression and wider participation in policy determination from the viewpoints of the various other groups concerned with the education of young people. Through role-playing, they will have an opportunity to examine many of the issues that rise to the surface in a crisis situation, and gain some understanding of how adults might respond to the growing desire of students to take a more active role in school affairs and to be allowed the guarantees of personal freedoms enjoyed by the adult community.

It is hoped that this role-playing simulation can achieve several specific results:

STUDENTS ARE ALSO CITIZENS

1. To foster consideration of the degree to which democratic procedures should apply to high school students.

2. To consider what limits should exist to legitimate dissent at the high school level.

3. To show that communications between the various groups can be improved.

SITUATION

The student body presidents of the three high schools in the town of Lawrenceville called an open meeting of the students to discuss what they believed were undue limitations on their freedoms as individuals and as members of a minority group in the wider community of Lawrenceville, and what they might do about it.

After discussion and argument, the students agreed on what they wanted done to change the present rules, which they claimed infringed on their rights.

PRE-PLAY PROCEDURE

1. The class will draw up a list of changes they want the school board to make regarding student rights and student participation in school affairs.

   (Below is a suggested list of changes the students might consider when drawing up their list to submit to the school board.)

   A. A Student Evaluation Committee should be established to rate teachers.

   B. The school campus should be open. Students should have no restrictions on their right to come and go freely.

   C. Student lockers should be protected against private investigation by either school authorities or police. In the event of a legal search, the student should be present, as well as two unconcerned witnesses.

   D. A student representative of the Student Council should be present at all suspension, expulsion and exclusion hearings.

   E. A representative student committee should be formed to meet with the Board of Education on matters concerned with integration and busing.

F. A student committee should be formed to develop strategies to fight against crime and violence on the campus.

G. A smoking area should be provided on campus.

2. The School Board, having received the students' demands, has called an open hearing on the issue of students' rights. Attending the meeting are representatives of the following groups: students, teachers, parents, administrators, school board.

TIME TABLE AND PROCEDURAL DESCRIPTION

Time Needed: One or two class periods.

ORGANIZATION

1. The game can be played with a group of twenty to thirty-five.

2. Divide the main group into five odd-numbered sub-groups, each to represent students, teachers, parents, administrators, and school board members.

3. Each sub-group selects a spokesperson who will represent them in the play. Should a sub-group wish to do so, it can change its spokesperson during a time-out.

4. The spokespersons for the five sub-groups meet as an *ad hoc* committee of the school board to work towards a resolution of the problem. The school board spokesperson acts as chairperson of the meeting.

5. Organize the room so that the committee meets in the center at a table or in a circle with one extra chair called The Influence Chair.

6. The Influence Chair can be taken by anyone from any group who wishes to express his/her views. The Chair must be vacated when another person wishes to speak.

7. This *ad hoc* committee, established by the Board of Education, operates according to *Robert's Rules of Order, Revised*. Each member of the committee has one vote. Anyone occupying the Influence Chair may speak, but can neither propose motions nor vote.

8. If disruptions during the game make it necessary for the teacher, who will act as referee, to declare participants arrested, they will not be permitted to use the Influence Chair, to call caucus meetings, or to communicate in writing with their spokesperson on the *ad hoc* committee.

9. Dissident members of sub-groups can communicate with other dissidents either in writing or through private discussion while the game is in progress. The only limitation on this type of communication is that it must not disrupt the game.

10. Minority or dissenting groups may caucus and form coalitions as the play progresses.

11. The teacher explains the organization and the play. At any time the teacher can introduce new data, indicate the passage of time, or exercise police power. The teacher's decisions are final.

12. Each sub-group must act on its statement of goals, and must also consider the political implications of proposals it makes (e.g., if the school board agrees to all of the students' requests, it could lead to a recall election, etc.).

THE PLAY

1. The teacher explains procedures and organization, etc.

2. The students present suggested school changes.

3. Sub-groups are organized.

4. Sub-groups select spokespersons, discuss goals, strategies, and the responses they will make to students' requests.

5. The meeting of the committee is convened by the teacher.

6. The spokesperson for the administration proposes action on the students' requests.

7. Each sub-group spokesperson responds to the proposal, the student group goes last.

8. Members of the sub-groups can communicate with their spokespersons in writing, or they can take the Influence Chair and be recognized by the chairperson of the committee.

9. As the discussion progresses, the spokespersons can request time to meet with their sub-groups.

10. Dissenters can request that the teacher call "time out" and convene meetings of dissenting groups or meetings of dissenters with other sub-groups (e.g., dissenting teachers can meet with student sub-groups).

TEACHER'S INSTRUCTION SHEET

Teacher's Role: The function of the teacher is to explain the procedures to be followed in the role playing simulation, to evaluate progress, and to introduce new data whenever it appears necessary to stimulate discussion or action.

It is extremely important that the teacher not interfere if things are running smoothly. Too much teacher involvement would tend to take responsibility for the action away from participants and to distract from the activity.

Remember, the goal of the game is to simulate reality which is not always as exciting as fantasy.

GROUP GOALS

Each individual must operate within the framework of the prejudices, social attitudes, myths, misconceptions, etc. of his/her group.

PARENTS:

Your educational philosophy and that of the community is shared by most teachers, administrators, and school board members, and is best expressed by the following statements:

> "The primary goal of the schools in this community is to prepare young people to take their place as productive members of American society."
>
> "Practical skills are needed for success as well as the ability to follow the will of the majority on most matters pertaining to individual habits and modes of behavior."
>
> "It is also the responsibility of the schools to help students develop a respect for the history and institutions of the United States."

STUDENTS:

You have a strong desire to participate in matters that seem important concerning your school and society. In particular, you want more civil rights and more participation in school affairs. You believe the democratic ideals of American life should be practiced and do not see any difference between yourselves in the school community and adults in the community at large.

STUDENTS ARE ALSO CITIZENS

TEACHERS:

Your primary interest is educating young people in an orderly school with a minimum of discipline problems and disruptive students. You have a strong commitment to a "democratic society", but a variety of opinions about what constitutes "democratic".

ADMINISTRATORS:

You are primarily concerned with running a smoothly functioning educational institution with a minimum number of problems from students, teachers, or parents.

SCHOOL BOARD MEMBERS:

As a board member, you are primarily concerned with running the best possible educational system for the least money. It is difficult to tell which priority you consider most important. You favor order and smoothly running schools with a minimum amount of parental dissatisfaction. You were elected by a small minority of the registered voters during a time of apathy over educational matters in the community. You want to continue to represent your community and respond to pressure from your constituents.

FOLLOW-UP UNIT #2

The alternative activity for post-discussion of First Amendment Rights of Students allows the class to follow the determined efforts of a small group of citizens in the fight for freedom of the school press as a student right under the First Amendment. The teacher should guide the discussion so that the information gained from the Tinker v. Des Moines Community School District is applied to this new set of facts.

Copy the article, "Press Freedom and Student Publications", from the Student's Follow-Up Unit #2 and distribute to the class. Have the students read the article. Discuss the questions as they appear within the article from the point of view of whether the basic guarantees of the First Amendment apply to students in this case.

Press Freedom and Student Publications

In 1973 Mike Weiner, a journalism teacher at Canoga Park High School, sent a letter to the school board to protest the statement, "the principle of freedom of the press does not apply to school newspapers", which was contained in the official course of study for Advanced Journalism.

This initial letter was the beginning of a lengthy dispute, with teachers and students pitted against administrators and the school board. At issue were the questions: Should the student press be protected by the First Amendment? Did the school board policy violate the State Education Code? Were the articles being restricted for fear of controversy, not libel?

QUESTIONS

A. Do you think the protection the general public press has under the First Amendment should be extended to the student press?

B. Would you say that the First Amendment rights of students are being violated if they are not permitted a free press on the campus?

Weiner's position of press freedom was that student press should be operated the way general circulation newspapers were. School press freedom would give exposure to controversial issues, a policy expressly endorsed by the school board in a rule adopted in February, 1973.

Speaking for the schools, the Associate Superintendent contended that student newspapers are essentially a classroom instructional activity, subject to the same restrictions as other educational material, including the principal's approval, and thus not within the First Amendment's protection. The First First Amendment , the school board spokesperson said, applied only to unofficial publications and outside speakers. The school spokesperson also disputed the need for exposure to controversy, arguing students have access to the outside and underground press.

QUESTIONS

A. Do you believe First Amendment rights fade away during the hours of employment, whether that employment is an adult's job or a student's class?

B. Do you think that the purpose of classroom activities makes it necessary for the school to put certain limitations on students' rights? Explain your reasoning.

To amass data to support Weiner's charges of censorship, the Los Angeles Journalism Teachers Association sent survey questionnaires to every journalism teacher in the district, collecting anecdotes, quctes and examples. Twenty-five percent of the senior highs and forty percent of the junior highs reported experiencing prior restraint censorship. By a 2-1 margin, the journalism teachers voted to first go through the regular board channels to obtain revision of school policy. If that failed, they would go to the American Civil Liberties Union for aid in court action.

In February, 1974, the LAJTA presented its data before the board committee in a lengthy hearing which aided both sides of the controversy. In a 4-3 vote, the board refused to expand student rights. However, the board did approve a new rule which declared that newspaper articles could discuss controversial issues, but retaining for the principal the "ultimate decision" regarding the school paper's content. This was unacceptable to the teachers. They had tried to go through channels and had lost.

QUESTIONS

A. If you were the attorney for the journalism teachers, what arguments would you make to support the charges of prior restraint being an infringement of First Amendment rights of students?

B. Would you apply the same reasoning the court did in deciding the Tinker case? Why? Why not?

C. Do you think the school board's ruling that approved discussion of controversial issues was broad enough to protect student rights? Why? Why not?

D. How would you argue to support the principal's right to have ultimate decision regarding the school paper's content?

E. What would be your arguments against such control?

F. Do you think that Michael Weiner operated in the public interest by pursuing this issue through so many years of controversy? Why? Why not?

G. From the point of view of the student, what do you think a free press on the campus accomplishes?

H. Are only the rights of school journalists involved in this controversy or are the rights of all students involved? Why?

I. Do you think the school administration gains in the long run when students rights are recognized and respected?

J. If you were the judge in this case, how would you rule on the charges of Michael Weiner and the journalism teachers?

K. What was the class's general opinion on the case?

COURT SYSTEMS

There are essentially three ways to categorize our courts. First, there are trial and appellate courts. The job of the trial courts is to find the facts in the case and apply the law to those specific facts. All cases start at the trial court level. The appellate courts focus on the law involved in the case. They do not review questions of fact, which the trial court decides. Appellate courts decide whether the trial judge erred in his interpretation of the law, and thus a case may reach an appellate court only after it has been heard in a trial court.

The second distinction is between criminal and civil courts. In a criminal case (where accused has harmed society and government, representing society, brings a case against him), the government accuses a person of violating a law for which a penalty is provided. It seeks to punish the accused by depriving him of his life, liberty, or property. In a civil case, one may also be deprived of his property (and sometimes his liberty), but for a different reason. The purpose of a criminal trial is to punish the offender; that of a civil trial (one person against another--between private citizens) is to compensate one person for a loss caused by another. Common cases where such liability may be found are automobile accidents, sale of faulty merchandise, and failure to pay rent.

Third, there are both state and federal court systems. (See Chart on Court Structures.) The federal district courts are the trial courts for all cases arising under the laws and Constitution of the United States. State courts have jurisdiction over all cases arising at common law* and equity** as well as all cases under the laws of the states as enacted by their legislatures. Most cases, both criminal and civil, are brought in the state courts. Within the state court system there may be a number of different trial and appellate courts having jurisdiction, or authority, over different types of cases and cases of different degrees of importance. For example, in California trial courts, a case in a large judicial district will be brought in either the municipal court or the superior court. The superior court handles the

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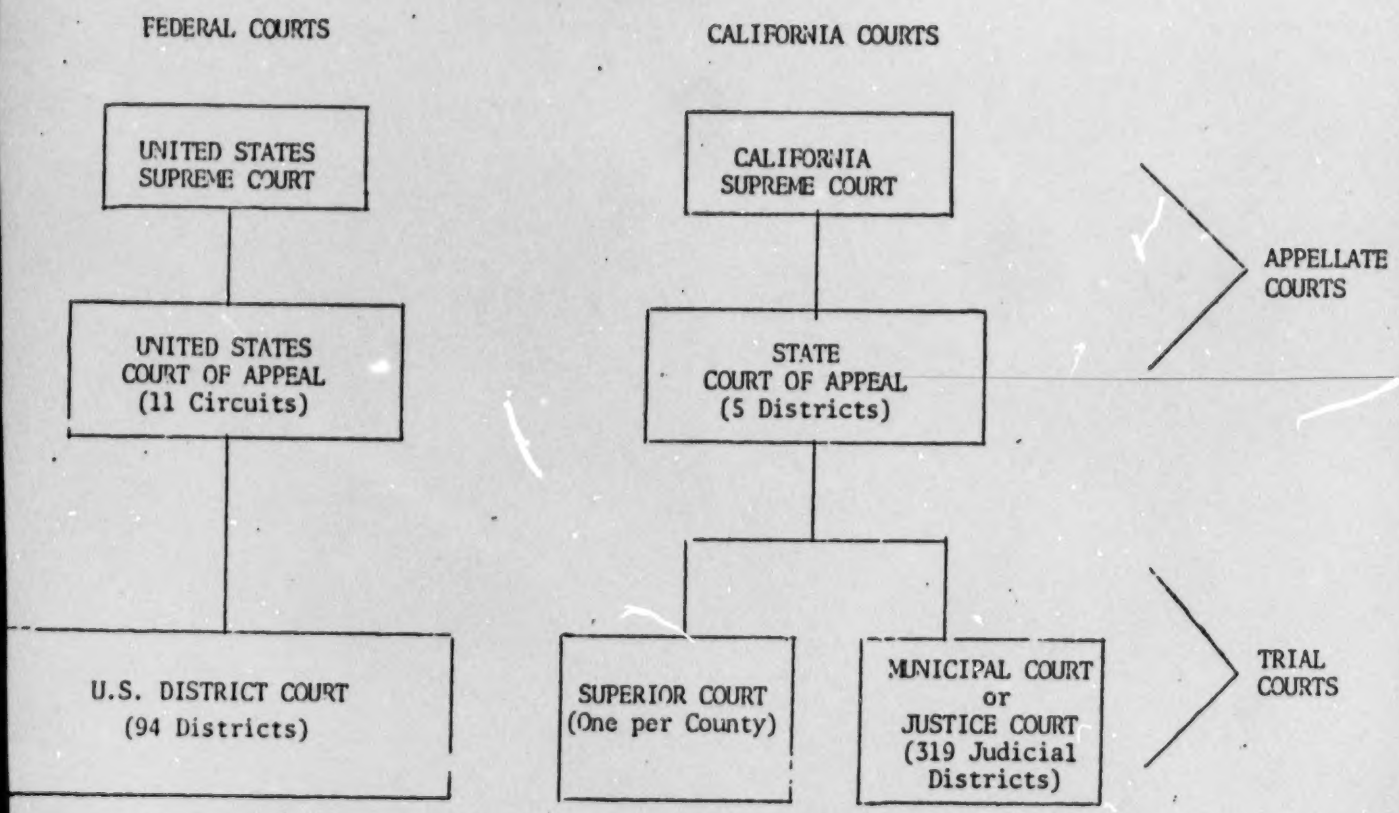
* Common law - Law that has its origins in England and grows from ever-changing custom and tradition. Judge-made law (as opposed to legislature-made law).

** Equity - A court's power to "do justice" where specific laws do not cover the situation.

more important cases--the felonies and civil cases involving over $5,000. But certain types of cases, such as divorce and probate, are brought only in superior court regardless of the amount in controversy. In the smaller judicial districts with a justice court instead of a municipal court, there is a similar division of the cases.

The federal court system has a similar structure. While there are a number of courts that handle only specialized matters, such as the customs court and tax court, most cases start in the federal district courts. Congress has strictly limited the types of cases that fall within the jurisdiction of these courts. One type is the diversity case where each party resides in a different state and the amount in controversy is over $10,000. The other type is a case involving a federal question, that is, one applying the federal constitution, statutes, or treaties.


FEDERAL COURTS
CALIFORNIA COURTS
UNITED STATES SUPREME COURT
UNITED STATES COURT OF APPEAL (11 Circuits)
U.S. DISTRICT COURT (94 Districts)
CALIFORNIA SUPREME COURT
STATE COURT OF APPEAL (5 Districts)
SUPERIOR COURT (One per County)
MUNICIPAL COURT or JUSTICE COURT (319 Judicial Districts)
APPELLATE COURTS
TRIAL COURTS

A SIMPLIFIED VIEW OF THE FEDERAL AND CALIFORNIA COURT STRUCTURES

"STUDENTS ARE ALSO CITIZENS"

First Amendment Rights of Students

A Lawyer Lesson Plan
Prepared by Scott, Macey, 1982

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STUDENTS ARE ALSO CITIZENS
(First Amendment Rights of Students)

LAWYER'S LESSON PLAN

Area of Law: Constitutional Law

Specific Topic: First Amendment Rights of Students

Objective: To expose students to Supreme Court, lower federal court, and state court decisions regarding first amendment rights of students and to raise various issues left unanswered by the courts.

CASE

The case used in this fact sheet is based upon the Supreme Court's landmark decision regarding students' First Amendment rights: Tinker v. Des Moines Community School Dist., 393 U.S. 502 (1969). Students will be dealing with the same issues faced by the Supreme Court Justices.

John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school. In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group was determined to publicize their objections to the hositilites in Vietnam and their support for a truce by wearing black arm bands during the holiday season and by fasting on December 16 and New Year's Eve. The principals of the Des Moines schools became aware of the plan to wear arm bands. On December 14, 1965, they met and adopted a policy that any student wearing an arm band to school would be asked to remove it, and if he refused, he would be suspended until he returned without the arm band. All the students involved were aware of the regulation that the school authorities adopted. On December 16, Mary Beth and Christopher wore black arm bands to their schools. John Tinker wore his the next day. They were all sent home and suspended from school until they would come back without their arm bands. They did not return to school until after New Year's Day, when the planned period for wearing arm bands had expired. The students' fathers then filed a complaint in the federal district court. They asked for an injunction restraining the school officials and the members of the Board of Directors of the school district from disciplining the students and they sought nominal damages.

QUESTIONS AND DISCUSSION

A. What are the major issues raised by the case? Does a student have a constitutionally protected right to express his or her views at school? If so, is that right absolute? Can a student, while in school or elsewhere, express his or her views whenever and in whatever way, and for whatever reasons, he or she chooses, or may the school and the school officials regulate the expression of student speech and in certain cases prohibit it entirely?

B. What are the opposing forces involved in the issues mentioned above? Which of these interests or forces should be protected by the law? Why?

1. Arguments Supporting School Officials' Position Limiting Student Expression. Schools have a basic need to maintain discipline and decorum in their midst. Teachers, students, and school administrators could not effectively function in an atmosphere of chaos and disruption. Teachers need the time to present the material to which all students should be exposed in order to achieve a sound education. If students are allowed unbridled freedom to express their views in any manner, at any time, and upon any subject, teachers would not be able to successfully present their lessons. Additionally, many subjects arouse strong feelings and passions in those people involved in a discussion. The uncontrolled presentation of student views, while at school, would likely cause numerous instances of disruptive and antisocial behavior. Students should not take up valuable school time discussing topics which are not relevant to the subjects they are being taught. Many students are not mature enough nor knowledgeable enough to discuss intelligently controversial subjects.

2. Arguments Supporting Free Student Expression. The arguments above seem to conflict with the basic First Amendment guarantees of freedom of speech, press, religion and assembly for all Americans. The First Amendment appears to make no distinction between students and other Americans or between minors and adults. The right to express one's views on a subject, whether the views or the subject be popular or not, is one of the most basic rights of a free society. If school officials can regulate topics of discussion as well as time and manner of discussion, who should have

the discretionary authority to decide which topics students can discuss and which topics students cannot discuss: teachers? parents? principals? the school board? Schools are and should be learning environments. Something can be learned from a discussion of almost any subject. Most high school students are probably mature and intelligent enough to discuss controversial subjects of general interest in the community. The majority of students should not be prevented from free discussion because a few may act in a disruptive or irresponsible manner. Freely discussing various subjects and expressing one's views thereon should help to make students better citizens in their adult years. Students should be able to express their views on even very controversial subjects, such as war, sex and religion, because it is healthy to discuss such subjects, open discussion will likely lead to better dealing with those subjects when students face them in real life, and repressing discussion of controversial subjects could likely lead to more disruptive and irresponsible acts either during or after school.

RESOLUTION OF THE DISPUTE OR DILEMMA

The Supreme Court decided the case in favor of the students.

The Court held that First Amendment rights of freedom of speech and expression are available to students in the school environment. It held that the wearing of black arm bands by students during school hours as a symbolic act to publicize their feelings about the Vietnam conflict, and their support for a truce, was protected by the First Amendment because it was a form of expression closely related to pure speech, rather than actually or potentially disruptive conduct.

In deciding the case, the Court emphasized the point that the exercise of the right of free speech cannot be curtailed unless it is shown that such exercise would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school. The Court felt that it was the obligation of school officials, in desiring to regulate or limit student expression, to make a specific showing of how such expression would materially disrupt the operation of the classroom in particular and the school in general.

Additionally, the Court held that students' constitutional rights of freedom of speech do not embrace merely the classroom hours but also apply when students are in the cafeteria, or on the playing field, or on the campus during authorized

school hours. The Court also specifically stated that it was the right of students to express their views even on controversial subjects. The Court held that schools must take the risk that free discussion of controversial subjects may start an argument or cause a disturbance. Schools cannot regulate or limit speech merely to avoid the discomfort and unpleasantness which often accompany an unpopular viewpoint. School authorities can prohibit student speech only if there is strong evidence that student expression would substantially interfere with the work of the school or that it would impinge upon the rights of other students or materially interfere with school work or discipline. The Court stated that schools may not be "enclaves of totalitarianism" and that school officials do not possess absolute authority over their students.

The Court also emphasized, however, that students must respect their obligations to the school and the state. Therefore, the Court held that the right of free speech and expression is not an absolute right but one which must be exercised in a responsible, mature manner with due regard for the rights and feelings of others.

It is important to remember that the Supreme Court decision in Tinker dealt only with state-supported schools, not private schools, and concerned just speech or expression and not more active behavior. (The case is an example of how contending interests and rights can be balanced in a democratic society. It shows that persons with controversial beliefs and unpopular views are able to express themselves freely in our society and that the Constitution applies to all Americans, young and old.)

QUESTIONS AND HYPOTHETICAL SITUATIONS

A. Should students be able to express partisan political views in the school or classroom? How should teachers and school officials deal with the expression of such views? Should teachers remain neutral with regard to the expression of student views on such topics?

B. Regarding the expression of views on controversial subjects which are likely to arouse anger and disruptive behavior on the part of others, should it make a difference whether the expression of student views thereon is spontaneous or preplanned, organized or independent, or expressed as a group or autonomously?

C. What does the First Amendment guarantee of freedom of speech and expression mean to you? Do you think there should be limits upon such freedom? Do you think that such freedom is or should be limited merely to speech or other symbolic expression or should it also entail more active behavior? What do you feel are your responsibilities with regard to exercise of this freedom?

OTHER COURT DECISIONS AND ISSUES DEALING WITH STUDENTS' RIGHTS

A. In one case, school officials attempted to prohibit students from expressing their views because those who held opposing views became angry and boisterous. What do you think should be done in such a situation? Do you think it should make a difference if the students expressing their views know that such expression will generate extreme anger in others?

The courts have consistently held that the rights of those who peacefully express their views may not be defeated merely because such expression may anger others. The mere fact that a peaceful student speech or demonstration may give rise to disruptive reactions by the listeners or others generally is not considered a sufficient showing of the type of "material and substantial" interference with the requirements of appropriate discipline in the schools that gives rise to the right of school officials to limit or prevent such expression. Thus, if students express themselves in an orderly, nondisruptive manner, their expressions cannot be limited or prohibited because other students lack self-control and tend to overreact, thereby creating a disruptive influence. Because our Constitution guarantees free speech, such right cannot be lost merely because others dislike the content or manner of the speech and wish to prevent it. Although, in many cases, it would be easier for school officials merely to limit or prevent a speech if it is likely but not intended to cause substantial disruption, courts have consistently held that such officials must make every reasonable attempt to quell the disturbance rather than limit or prevent the speech.

Do you think that school officials can or should regulate the time, place, and manner of expression of views apart from the content of speech? Generally, the courts have recognized that, in certain instances, the time, place and manner of expression of views has to be regulated in order to maintain peace and order in the community.

B. Should students be allowed to invite a very controversial speaker to their club or other meetings on school grounds or during school time?

Generally, students are free to invite even controversial speakers to speak at their meetings. However, if the school officials have clear and convincing evidence, not mere speculation, that the speech is likely to create

disorder at the school, some courts allow school officials to prohibit the invitation. Although the law is not clear on this point, it appears that invited speakers can be prevented from speaking if there is a clear and present danger to orderly operation of the school. The issue is currently unresolved, but it may be that school officials are held to a constutionally less rigid standard in allowing outside speakers to speak than they are with regard to student speakers.

C. May students be penalized for picketing outside the school, or for walking out of class, or for sitting in, if the demonstration is peaceful and orderly?

The courts are split as to these issues. As with other issues involving students' rights, there is not unanimity of opinion among the courts. This lack of unanimity is typical of the manner in which complex and controversial problems are dealt with by courts in America's diverse political, governmental, and judicial system. Only the U.S. Supreme Court can serve as the final arbiter of such constitutional disputes. When it comes to demonstrations on school property, most court decisions have allowed school authorities to prohibit such demonstrations, particularly when they take place during school hours or inside a school building. Students can probably be suspended for staying out of school and conducting a rally to protest school policies. (This is true even when the claimed policies are racially discriminatory.) Some courts permit schools to prohibit all demonstrations inside any school building.

School officials probably cannot prohibit or regulate demonstrations which neither occur during school hours nor on school property. However, whether the demonstration is on or off school premises, during or after school hours, and whether it deals with school subjects or not, student demonstrations must be peaceful and orderly and must not unlawfully disrupt either the school or the surrounding community.

Should a sit-in be prohibited or illegal because it is indoors or because other students gather in the halls to watch, or because school administrators cannot attend to their duties because they must keep watch on the demonstration?

One court, reasoning from the principle established by the Supreme Court in Tinker, has ruled that such a demonstration can be prohibited if it materially and substantially interferes with school activities. Such

disruption is to be measured by the conduct of the demonstrators and not the reaction of the audience, but if student demonstrators miss classes and cause other classes to be moved from scheduled locations because of the noise involved, the demonstrators will probably be deemed to have caused a material interference with school activities.

D. Should students be able to use school facilities such as bulletin boards, loudspeakers, mimeograph machines and school assemblies to express their views?

Normally, if the school only uses these facilities for official school business, school officials do not have to grant students the right to express their own views. However, if some students or some groups at school are allowed to use the facilities, then generally all students and groups should have equal access to their use. Nonetheless, school officials can still prohibit some individuals or groups from using them if their activities are likely to lead to substantial and material disruption of or interference with school activities.

E. Should students be able to hand out literature, including underground newspapers, on school property or during school hours? Should it make a difference depending on the content of the printed matter? What if the literature contains profane language or obscene matters? Should students be able to set up a literature table in the schoolyard or school lobbies? Should students be able to hand out leaflets expressing their views or advertising some after-school event, such as a rally, in the classroom or in the halls?

Students generally are allowed by the courts to distribute literature on school grounds. However, the school can place reasonable limitations upon such right. Students usually are not permitted to hand out literature in the classroom or during class hours. Hallways also may not be used to distribute literature if such use of the hallways would cause a pedestrian traffic jam. Students should be able to set up a literature table in the lobby or schoolyard if such is allowed for other student groups or reasons, such as selling tickets to a school affair or selling bakery goods. Generally, student publications cannot be banned merely because they use "bad words". However, materials which courts deem to be obscene may be banned from the school grounds and elsewhere. Students should not bring or distribute obscene or pornographic material on school property or elsewhere. The Supreme Court has upheld the right of officials to punish individuals for such activities.

F. Should students be able to criticize teachers and other schcol officials? Should they be able to do so during school hours or on school grounds?

Generally, the landmark Supreme Court decision in Tinker has been interpreted to guarantee the right of students to peacefully and responsibly criticize school officials. However, the courts have emphasized that such criticism should be peaceful, truthful and respectful. Otherwise, students may be sued for money damages for slander or libel. If student criticism advised other students to disobey a rule, school officials may sometimes prohibit such criticism, depending upon the disruptive effects of the potential disobedience involved.

G. May a principal or other school administrator require students to submit literature to school authorities for approval in advance of distribution?

Most courts which have ruled upon the issue have held that any such general rule applying to all student literature would be invalid. Most courts look disfavorably upon any substantial prior restraint of student publications unless there is a very compelling reason (e.g., impending riot) to uphold such restraint. Some courts have held that no prior approval at all can be required since such a rule would violate the First Amendment doctrine against the prohibition of censorship. Other courts have allowed the requirement of prior approval of literature but have demanded that the school board adopt specific procedural rules, such as a clear statement of which literature has to be submitted and to whom it has to be submitted.

H. What control should school officials have over a student-run newspaper?

Generally, the schocl officials may not act as a censor of the content of a newspaper if it has been formed for the expression of student views. Do you think it should make a difference whether or not the students or the school paid for the newspaper?

I. Should school officials have any authority over student dress and appearance? Should school officials be able to establish rules regulating dress? Should school officials be able to adopt rules regulating the length of students' hair? Should it make a difference whether or not the students are involved in some particular extracurricular activity? Should it make a difference whether or not long hair or a particular type of apparel would be a safety hazard?

Some courts allow school officials to establish rules regulating dress as long as such rules are reasonably calculated to promote necessary discipline in the school. A few courts do not allow schools to adopt any rules regulating dress other than those established solely for safety protection.

There is a close split of opinion among the various federal and state courts regarding the right of schools to adopt rules regulating the length and style of students' hair. The Supreme Court has been asked numerous times to review such cases but has consistently declined to express its opinion on the subject. One California court invalidated a school rule which stated that "extremes of hair styles are not acceptable" because the rule was too vague to be constitutionally valid.

In this regard, some courts will uphold school rules as long as they are rationally related to a legitimate purpose, while other courts will only uphold such rules if there is a compelling state interest to promulgate such. If the court requires school officials to show a "compelling state interest" in order to uphold the rule, this places a very heavy burden on such officials because it usually means that the court will invalidate the rule if there is any other less constitutionally restrictive means by which to reasonably accomplish the intended purpose. On the other hand, if the court only requires the school officials to show a rational relationship between the rule and its intended purpose, the school officials need only show that the rule is a logical means by which to accomplish the intended purpose.

There is a similar split of views with regard to whether or not schools can adopt special rules regulating length and style of hair for student participants in extracurricular activities such as athletics, band, and special interest clubs. One California court allowed a school to adopt a rule requiring football players to have shorter hair than other students. With regard to considerations of safety, some courts say that school officials may not adopt a rule requiring short hair if there are other reasonable alternatives, such as requiring hair to be tied or requiring the wearing of a hat.

J. In addition to our federal Constitution, each state has adopted a Constitution, and some of these Constitutions include guarantees of free speech and press which are

broader than those contained in the First Amendment. For instance, Article I, Section 2 of the California Constitution states that, "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." The California Supreme Court has interpreted this Section to be more definitive and inclusive than the First Amendment.

Additionally, many states have adopted statutes which specifically guarantee students' First Amendment rights but which also place certain limitations on the exercise thereof. California has a statute which specifically grants students the right to exercise free expression but prohibits expression which is obscene, defamatory, or likely to incite unlawful acts or violation of lawful school regulations. Do you think that these limitations on free speech are or should be constitutional under either the federal or state Constitution?

K. Do you think that students of all levels or grades should have the same rights? Can you think of other issues involved in this discussion? Can you think of other questions left unanswered by the courts or this discussion?

REFERENCES

There are many federal and state decisions pertaining to this area of the law. A few of the federal cases, in addition to Tinker, supra, are:

Shanley v. Northeast Independent School District, 462 F.2d 960 (5th Cir. 1972)

Dunn v. Tyler Independent School District, 452 F.2d 975 (9th Cir. 1972)

Butts v. Dallas Independent School District, 436 F.2d 728 (5th Cir. 1971)

Molpus v. Fortune, 432 F.2d 916 (5th Cir. 1970)

Scoville v. Board of Education of Joliet Township, 425 F.2d 10 (7th Cir. 1970)

Koppell v. Levine, 347 F.Supp. 456 (E.D.N.Y. 1972)

Neuhaus v. Torrey, 310 F.Supp. 192 (N.D. Cal. 1970)

Sullivan v. Houston Independent School District, 307 F.Supp. 1328 (S.D. Tex. 1969)

Several state court decisions are:

Bright v. Los Angeles Unified Sch. Dist., 51 Cal.App. 852, 124 Cal.Rptr. 598 (1975, hearing granted by California Supreme Court

Meyers v. Arcata Union High School District, 269 Cal. App.2d 549, 75 Cal.Rptr. 68 (1969)

Akin v. Board of Education of Riverside Unified School Dist., 262 Cal.App.2d 161, 68 Cal.Rptr. 557 (1968)

California constitutional and statutory law pertaining to students' rights of free speech:

California Constitution, Article I, Section 2
California Education Code, Section 10611

There are numerous books and pamphlets concerning the various First Amendment rights of students. Several interesting and well-done ones are:

Cary, Eve, What Every Teacher Should Know About Student Rights, National Education Association, Washington, D.C., 1975. This pamphlet is a short synopsis of the law prepared primarily for teachers. It has a bibliography and could serve as a useful introduction to the subject for teachers.

La Morte, Michael, et al., Students' Legal Rights and Responsibilities, W. H. Anderson Co., Cincinnati, 1971. This book is a good objective review of the law and would be of interest to students, teachers, and administrators.

Reutter, E. Edmund, Jr., The Courts and Student Conduct, National Organization on Legal Problems of Education, Topeka, 1975. This pamphlet is a very good, short review of this entire area of the law and should prove useful to all interested parties.

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SUPPLEMENT
ADDITIONAL COURT DECISIONS AND ISSUES DEALING WITH STUDENTS' RIGHTS

Should public school students be afforded a right to a hearing before they can be suspended or expelled? Does your answer depend on whether or not there is a constitutional right to a public education? Should public school students be afforded a right to a hearing prior to the imposition of physical discipline or paddling? Is paddling a less severe form of discipline than suspension or expulsion? If a distinction exists, should the difference form the basis of a different rule or right?

Although the United States Supreme Court has held that there is no constitutional right to a public education, the Court has also held that once a state establishes a public educational system, certain constitutional rights become operative and applicable to students. Among these constitutional rights are those which come under the broad heading of "due process" made applicable to the states pursuant to the 14th Amendment. Among the protections afforded by the 14th Amendment is the right to an informal hearing prior to the suspension or expulsion of a public school student. The Court has reasoned that once the state has undertaken to provide education, students have "legitimate claims of entitlement" to a public education which cannot be taken away by suspension without first affording the student an opportunity to be heard and to determine if misconduct had in fact occurred. The Court has also stated that suspension or expulsion reflects on a student's name and reputation and that a suspension without a hearing amounts to a deprivation of the student's liberty, in that a suspension would be placed on a student's record and could damage him in the future.

In another case, however, the Court held that a student could be paddled by school officials without having to be given a hearing prior to the imposition of the discipline. In so holding, the Court found that corporal punishment was not in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The Court also held that, although the 14th Amendment's due process clause did apply, the process which was due was satisfied by common law safeguards such as civil remedies and criminal penalties. The Court distinguished the suspension/expulsion case by stating that paddling did not involve a state-created right like education and that paddling did not represent a deprivation of liberty, in that it did not tarnish the student's name nor cause harm to his reputation.

Due Process still applies, however, because freedom from bodily restraint and punishment is part of the "Liberty" protected against arbitary deprivation.

Do you think the Court was right in holding that paddling does not blemish a student's name or reputation? Do you think the Court's decision would be different if the imposition of paddling became part of that student's permanent record?

REFERENCES

Goss v. Lopez, 419 U.S. 565, 42 L.Ed.2d 725, 95 S.Ct. 729 (1975)

Ingraham v. Wright, 430 U.S. 651, 51 L.Ed.2d 711, 97 S.Ct. 1401 (1977)

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